

II. Rejection under § 103(a)

The Examiner rejects claims 27-62 under 35 U.S.C. § 103(a) as being unpatentable over *Aaslyng* et al. (WO 97/19998) ("*Aaslyng*") in view of *Junino* et al. (U.S. Patent No. 6,090,160) ("*Junino*"). Office Action, page 2. Specifically, the Examiner alleges that *Aaslyng* teaches a hair dyeing composition comprising oxidation bases, couplers such as 2,4-diaminoanisole, and laccase enzyme. *Id.* at pages 2-3. However, the Examiner admits that *Aaslyng* does not teach "the claimed coupler of 2-amino-4-N-(β -hydroxyethyl)aminoanisole" nor the "double bases and acid addition salts as claimed." *Id.* page 3. To remedy these deficiencies, the Examiner relies on *Junino* and alleges that because *Junino* "in analogous art of hair dyeing formulation, teaches a composition comprising oxidation bases, coupler 2,4-diaminoanisole and the specific coupler of 2-amino-4-N-(β -hydroxyethyl) aminoanisole as claimed . . . double oxidation bases . . . and acid addition salts [thereof]," it would have been obvious to modify *Aaslyng* "by substituting 2,4-diaminoanisole with . . . 2-amino-4-N-(β -hydroxyethyl) aminoanisole and . . . incorporat[ing] the double bases and acid addition salts as taught by *Junino*." *Id.*

Applicants respectfully disagree as it is their position that the Examiner's proposed combination of reference teachings would not have been obvious, in particular because it would have been unreasonable to expect success in making such a combination. For one thing, *Aaslyng* is based on an enzymatic oxidizing system and *Junino* on a peroxide oxidizing system. Further, hair dyeing is known to be an unpredictable art. Applicants argued these positions and others at length in the parent application.

To support their position, Applicants have concurrently filed a Declaration under 37 C.F.R. § 1.132 ("Rule 132 declaration") to show that the inventive composition, having 2-amino-4-N-(β -hydroxyethyl)aminoanisole as a coupler, gives superior results in comparison with a composition having 2,4-diaminoanisole as a coupler. As indicated in the Rule 132 declaration, the inventive composition 1 provides significantly improved properties, *i.e.*, more intense color, on all tested hairs, *i.e.*, natural hair, permed hair, and bleached hair, than the comparative composition 2. Such a result was not predictable, or reasonably expected.

Therefore, the results of the comparative tests shown in the Rule 132 declaration support Applicants' position that the Examiner has not succeeded in making a *prima facie* case of obviousness. In particular, the test results directly rebut the Examiner's assertion in the Office Action that it would have been obvious to replace 2,4-diaminoanisole with 2-amino-4-N-(β -hydroxyethyl)aminoanisole. Accordingly, Applicants respectfully request this rejection be withdrawn.

III. Conclusion

In view of the foregoing remarks, Applicants respectfully request reconsideration and reexamination of this application, and the timely allowance of the pending claims.

If the Examiner believes a telephone conference would be useful in resolving any outstanding issues, he is invited to call Applicant's undersigned representative at (202) 408-4218.

If there is any fee due in connection with the filing of this response, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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Attachment:

Declaration under 37 C.F.R. § 1.132